Lesson 2: Definitions and Controls

What You Will Learn

- What Performance-Based Payment (PBP) financing **will** provide
- What Performance-Based Payments are **NOT** intended to be
- Statutes, regulations, policies, and other resources established to control the use and guide the administration of Performance-Based Payments

What You Will Learn (cont'd)

- Criteria for considering use of PBP financing
- Similarities and differences between Progress Payments and Performance-Based Payments
- Benefits and risks of using PBP financing
  - Contractor
  - Government

What PBPs ARE

- Method of providing financing to contractors performing under fixed-price, non-commercial contracts, or fixed price items on a mixed type contract
- Payments are based upon contractor performance of definitive criteria uniquely established in each contract

What PBPs ARE (cont'd)

- Payment amounts should represent expenses that contractor could reasonably be expected to incur in order to achieve completion of each defined criteria or event

What PBPs Are NOT

- Performance-Based Payments are NOT Advance Payments
- Performance-Based Payments are NOT meant to induce contractors to achieve performance levels that exceed contract requirements

What PBPs Are NOT (cont'd)

- Performance-Based Payments are NOT payment for deliverable goods or services, nor do they represent Government acceptance of contract deliverables

Authority to Use PBPs

- Statute: 10 U.S.C. 2307 (b)
  - Whenever practicable, payments…shall be made on any of the following bases:
    - Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurements, or statistical process controls
      - Acceptable items refers to contractor receipt of materials or sub-assemblies
    - Accomplishment of events defined in the program management plan
    - Other quantifiable measures of results

Authority to Use PBPs (cont'd)

- Regulation
  - FAR Subpart 32.10
    - 32.1001(a) "Performance-based payments are the preferred Government financing method when the contracting officer finds them practical, and the contractor agrees to their use."
  - FAR Part 52
    - 52.232-28 Invitation to Propose Performance-Based Payments
    - 52.232-32 Performance-Based Payments

Authority to Use PBPs (cont'd)

- Policy
  - USD (AT&L) Policy Statement (11/13/2000)
    - For FY 2002: at least 25% of all fixed-price contracts over $2M must use PBP financing
    - By FY 2005: PBPs should be the most prevalent form of financing for all fixed-price contracts

Other Resources

- DCMA Guidebook, Performance-Based Payments
- OSD User's Guide to Performance-Based Payments – Revised November 2001

  www.acq.osd.mil/ar/doc/PBPGuideNov2001.pdf

Other Resources (cont'd)

- Defense Acquisition University (DAU) Continuous Learning Center CBT Courses

How Do PBPs Compare To Progress Payments?

	Progress Payments	PBPs
Order of Preference	Considered customary contract financing	Preferred over other forms of customary financing
Approval Level	CO	CO
Criteria for Use	>$2.5M contract Lg Business >$100K contract Sm Business (Simplified Acquisition Threshold) >$50K for SDSB	>$2.5M contract Lg Business >$100K contract SmallBusiness (Simplified Acquisition Threshold) FAR 32.104(d)(2)&(3)
Basis for Payment	Based on actual, incurred costs (eligible, allowable & allocable)	Based on predetermined amounts, NOT actual costs
Entitlement to Payment	Submission of allowable costs which is commensurate with progress made	Successful and verifiable completion of performance event
Profit	Excluded from payment	Some profit may be included

How Do PBPs Compare To Progress Payments? (cont'd)

	Progress Payments	PBPs
Combining Financing	Can not be combined with PBPs (may be supplemented with advance payments/ guaranteed loans)	Can not be combined with Progress Payments (may be supplemented with advance payments/ guaranteed loans)
Contract Type	Fixed Price/FPIF/Fixed price portion of a mixed contract	Fixed Price/FPIF/Fixed price portion of a mixed contract
Accounting System	Must be approved	Does not require approval. Note: Under FPIF will still be required to track cost
Frequency of Payment	Not more than monthly	Not more than monthly (but may have >1 event per month)

How Do PBPs Compare To Progress Payments? (cont'd)

	Progress Payments	PBPs
Recoverable in Case of Default	**Yes**	**Yes**
Alternate Liquidation Rate Applicable	**Yes, under certain circumstances**	**No**

When Are PBPs Used?

- When regulatory conditions are met:
  - Fixed-price, non-commercial contract, including R&D [FAR 32.1000]
    - Fixed price line item portion of a mixed type contract
  - When a contract for architect-engineer services, construction, shipbuilding, conversion, alteration or repair does not allow for progress payments based on percentage or stage of completion. [FAR 32.1001(e)(2)]

When Are PBPs Used? (cont'd)

- When regulatory conditions are met: (cont'd)
  - Contract is not awarded through sealed bid procedures [FAR 32.1001(e)(3)]
  - Contract is valued at $2.5M> large business
    - $100K> (Simplified Acquisition Threshold) small business [FAR 32.104(d)(2)&(3)]

When Are PBPs Used? (cont'd)

- When regulatory conditions are met: (cont'd)
  - Contractor is not expected to be able to bill for delivery of products for substantial time after work begins [FAR 32.104(d)(1)(i)]

When Are PBPs Used? (cont'd)

- When regulatory conditions are met: (cont'd)
  - The contract, individual order, or line item is a fixed price type.
  - For indefinite delivery contracts, the individual order does not provide for progress payments.
  - For other than indefinite delivery contracts, the individual order does not provide for progress payments. [FAR 32.1003 (b), (c), (d)]

When Are PBPs Used? (cont'd)

- Other regulatory conditions:
  - PBPs are the preferred Government financing method when contracting officer finds them practical and contractor agrees to their use [FAR 32.1001(a)]
  - Contracting officer and contractor agree upon terms [FAR 32.1003(a)]

Government Benefits of Using PBPs

#1 Enhanced technical and schedule focus

#2 Reinforced roles of program managers and Integrated Product Teams (IPTs)

#3 Oversight and compliance costs may be reduced

#4 Risk of overpayment may be reduced

#5 More contractors may participate in Government contracting

Contractor Benefits of Using PBPs

#1 Improved cash flow to contractor

#2 Reduced costs of oversight and compliance

#3 Management team focus on technical and schedule progress

Government Risks of Using PBPs

- Poor completion events
- Poor completion criteria
- Event values not commensurate with milestone activities
  - Front loading of event values

Contractor Risks of Using PBPs

- No payment if PBP event not successfully completed
- Contractor bears risk for loss, theft, destruction or damage to property unless Government expressly assumed risk
  - Comparable to Progress Payment requirement

Lesson 2 Assessment

- Complete the True/False questions
- Work independently
- 5 minutes to complete the assessment

What You Learned

- What PBPs are and are not
- When PBPs can and cannot be used
- What gives us the authority to use PBPs
- The benefits of using PBPs (for both Government and contractor)
- The risks of using PBPs (for both Government and contractor)